

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HECTOR COLON

Claimant

VS.

CITY OF WICHITA

Respondent

Self-Insured

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Docket No. 228,528

ORDER

Claimant filed an application for Appeals Board review of a preliminary hearing Order entered by Administrative Law Judge John D. Clark on December 9, 1997.

ISSUES

The Administrative Law Judge denied claimant's requests for preliminary benefits finding claimant had failed to prove that his injury was a result of an accident which arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire preliminary hearing record and considering the briefs of the parties, the Appeals Board finds that the Administrative Law Judge's Order should be affirmed.

In his Application for Hearing, claimant alleged injury to his "back; bilateral lower extremities and all other body parts affected thereby." The claimant's alleged date of accident is "On or about 12/02/94 with repeated trauma from normal work duties each and every working day thereafter with specific incidents in November of 1996 and October of 1997."

At the preliminary hearing, claimant testified to a specific incident on November 12, 1996. He was performing his usual job duty of cleaning the carpet when he experienced pain in his low back. Respondent authorized treatment with Dr. John F. McMaster who eventually released claimant to return to his regular job duties on December 19, 1996.

After returning to work, claimant described having some ongoing symptoms but he did not report any additional injury or again seek medical treatment from the respondent until October 13, 1997, when he reported to the emergency room of Via Christi Hospital with complaints of a sudden onset of low back pain at home while walking to the bathroom and feeling a pop. This incident was also described as having occurred while claimant was bending over the sink brushing his teeth.

The Administrative Law Judge found that causation by the claimant's employment had not been established, quoting the treating physician, Dr. McMaster, who was "unable to attribute [claimant's] current complaint to any specific occupational injury." Claimant, in his brief, agrees that there was no specific occupational injury. Instead, this case involves repetitive trauma over an approximate three-year period from late 1994 through the fall of 1997. Claimant further alleges that his present injury is a continuation of the similar pain that claimant experienced on November 12, 1996. Dr. McMaster's office notes of November 13, 1996, contains the following history:

"HISTORY: The patient is a Spanish-speaking male who presents with his wife for evaluation of back pain. She states that yesterday while he was doing his regular duty, cleaning the carpet, he experienced pain in his back. She relates he has had this similar back pain since an injury in December 1994. Last night he was unable to sleep. He is experiencing pain in his lower back radiating down to his right leg. There is no bowel or bladder incontinence. No other symptoms are noted." (Preliminary Hearing transcript, Exhibit No. 1)

Claimant's counsel states that the similar back pain that claimant experienced on December of 1994 to which Dr. McMaster refers in the above note involved the thoracic area of the back; whereas, his present complaints are to the low back area only. Respondent's counsel points out that in 1996, claimant experienced pain radiating into his right leg; whereas, his present complaints are in the left leg. Respondent further argues that the incident that occurred at claimant's home on October 13, 1997, represents a subsequent, intervening accident unrelated to his November 1996 injury and also unrelated to his employment.

Although claimant's most recent acute onset of low back pain occurred at his home, claimant nevertheless relates his injury to the repetitive trauma of his regular job duties. However, the medical evidence, as it currently exists, fails to support claimant's position in this regard. The Appeals Board agrees with the Administrative Law Judge's analysis and conclusion that causation has not been established. Claimant has failed in his burden

of proving that his current need for medical treatment is a result of injury by accident arising out of and in the course of his employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order by Administrative Law Judge John D. Clark, dated December 9, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director